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WONG, WARNER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILFRID LEBLANC

Appeal 2009-011114
Application 10/077,405
Technology Center 2400

Before ALLEN R. MACDONALD, JASON V. MORGAN, and ERIC B.
CHEN, Administrative Patent Judges.

MACDONALD, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-14, 18-25, and 27-33. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

Exemplary independent claim 1 under appeal reads as follows:

1. A method of processing a transmitted digital media data stream comprising a stream of data elements, the method comprising steps of:
 - (a) receiving the data stream;
 - (b) holding each data element that is received prior to an end of a time period associated with each data element in a buffer until the end of the time period, at which time the data element is released for playout;
 - (c) monitoring a loss rate at which data elements in the data stream are not received by the end of their respective time periods; and
 - (d) adjusting a duration of the time period based upon the loss rate.

Rejections

1. The Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Agrawal (US 5,623,483).
2. The Examiner rejected dependent claims 2-14, 18-25, and 27-33 as being unpatentable under 35 U.S.C. § 103(a) over various combinations of Agrawal and other prior art.¹

Appellant's Contentions

1. Appellant contends that Agrawal does not support a finding of anticipation because:

The Examiner asserts that the time period referred to in operation (b) is satisfied by the timer 230 described in column

¹ Separate patentability is not argued for claims 2-14, 18-25, and 27-33 rejected under § 103(a).

5, lines 24-33, of Agrawal. Appellant respectfully disagrees and submits that the timer 230 of Agrawal merely defines a playout rate and not a playout deadline per claim 1. Claim 1 defines a time period at the end of which the data element is released for playout, i.e., a playout deadline. Adjusting such a time period is not akin to adjusting the playout rate. Adjusting the the [sic] playout deadline does not affect the playout rate. Since the playout deadline changes for all of the data elements, the playout rate remains the same. That is, the playout of the data elements is just offset in time by the amount of the change of the playout deadline, while the rate of playout remains the same.

(App. Br 7) (footnotes omitted).

2. Appellant further contends that Agrawal does not support a finding of anticipation because:

Furthermore, Agrawal does not teach adjusting the playout rate defined by the timer 230 based on a loss rate. The Examiner cites column 6, lines 15-17, of Agrawal, which states, “Control circuit 10 may also update the buffer operating characteristics; i.e., TED, buffer size, and pointer list in response to a changing PDD or PLR (packet loss rate).” However, Column 6, lines 15-17, does not teach or suggest adjusting the playout rate defined by the timer 230. Column 5, lines 24-39, of Agrawal talk about adjusting the timer 230 to the packet rate T_r minus the ratio of the buffer delay BD_i to the packet rate T_r . However, this adjustment is only done for the first packet in a stream and, more importantly, the adjustment made to the timer 230 is not based on a loss rate as in claim 1.

(App. Br 7).

Issue on Appeal

Did the Examiner err in rejecting claim 1 as being anticipated because Agrawal fails to describe the argued limitations?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's contentions that the Examiner has erred.

We disagree with Appellant's conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief. We concur with the conclusion reached by the Examiner.

Further, as to Appellant's above first contention, we disagree with Appellant's contention that the Examiner has erred because claim 1 requires adjusting a playout time and "[a]djusting such a time period is not akin to adjusting the playout rate" and "[a]djusting the the [sic] playout deadline does not affect the playout rate." Appellant's disclosed "rate" is a measured amount divided by a fixed time period (kb/s i.e., kilobits per second). Contrary to Appellant's assertion, a change in the time period for playout (adjusting the deadline) is a change in the playout rate because it changes the measured amount over that fixed time period.

As to Appellant's above second contention, the Examiner correctly points out that this limitation is taught in the Agrawal reference. (Ans. 23).

CONCLUSIONS

(1) The Examiner has not erred in rejecting claim 1 as being anticipated under 35 U.S.C. § 102(b).

(2) The Examiner has not erred in rejecting claim 2-14, 18-25, and 27-33 as being unpatentable under 35 U.S.C. § 103(a).

(3) Claims 1-14, 18-25, and 27-33 are not patentable.

DECISION

The Examiner's rejections of claims 1-14, 18-25, and 27-33 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD